



## STATEMENT OF AT&T CONNECTICUT

### Regarding Raised House Bill No. 6634 An Act Protecting Certain Telephone and Television Customers Before the Committee on Energy and Technology March 12, 2009

#### **Proposal:**

Section One of Raised House Bill No. 6634 seeks to regulate companies providing "telephone service using equipment which connects directly to the Internet" as a public service company while Section Two of the bill would impose a one percent higher gross receipts tax on cable, certified competitive video service providers or satellite television providers which do not provide transmission of the Connecticut Television Network ("CT-N") to all of their subscribers.

#### **Comments:**

AT&T strongly opposes Raised House Bill No. 6634 and urges the Committee to reject it.

Voice services offered by AT&T and its competitors in this state are offered in a highly competitive marketplace. In just one sign of the competitive nature of this environment, AT&T has 40 percent fewer access lines in this state than it did in the year 2000. Regulation was created as a surrogate for competition in order to protect consumers who otherwise lacked the ultimate sanction against their provider – that is, taking their business elsewhere. Yet today the abundant number of choices open to Connecticut consumers means that regulation of voice services is no longer necessary or appropriate.

The legislation before this Committee seeks to regulate Voice over Internet Protocol ("VoIP") services; however, the federal government has specifically preempted the states from regulating such services. First, VoIP services have been found to be an "information service" under the Communications Act of 1934, as amended, and are therefore free from state regulation under the long-standing policy of preemption of state regulation of such services implemented by the Federal Communications Commission ("FCC"). Second, irrespective of its statutory classification, traditional state regulation of VoIP is preempted under the principles articulated and applied in the FCC's *Vonage Order*.<sup>1</sup> In that order, the FCC preempted state regulation of Vonage's VoIP service on the theory that such regulation threatened the overriding federal policy in favor of rapid, widespread deployment of VoIP services and the broadband facilities over which those services ride. In that same order, the FCC emphasized that the federal preemption principles at issue in that case applied equally to state efforts to regulate any VoIP service provided the service shares certain specified "basic characteristics" of Vonage's service. The "basic characteristics" the FCC identified are: a requirement for a broadband connection, specialized customer premises equipment, and an

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<sup>1</sup> Memorandum Opinion and Order, *Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, 19 FCC Rcd 22404 (2004) ("*Vonage Order*"), petitions for review denied, *Minnesota Pub. Utils. Comm'n v. FCC*, 483 F.3d 570 (8th Cir. 2007).

integrated, multifaceted service offering that enables the end user to utilize numerous communications capabilities simultaneously.

Providers utilizing VoIP are helping to make Connecticut's voice services' market highly competitive, which is driving down prices and sparking innovation and new features for consumers. Attempting to regulate such services as envisioned by this legislation is not only contrary to federal law but more importantly would also be a disservice to the interest of consumers – which this legislation purports to help – by driving competitors from the market and increasing costs to consumers.

Section Two of the Raised Bill is likewise prohibited by federal law and should be rejected.

Section 542(b) of Title 47, United States Code, provides that “[f]or any twelve-month period, the franchise fees paid by a cable operator with respect to any cable system shall not exceed 5 percent of such cable operator's gross revenues derived in such period from the operation of the cable system to provide cable services.” Connecticut's gross receipts has been found to be its state's franchise fee; therefore, the Raised Bill's attempt to impose gross receipts tax in excess of five percent on cable operators is flatly in violation of this provision of federal law and, seeking to impose fees in excess of five percent on competitive video service providers such as AT&T, would constitute unlawful discrimination under federal law, as well as violate federal prohibitions on state or local action that impedes video competition.

In addition, the bill fails to care for the fact that it takes two parties to make an interconnection between a programmer and a program provider possible and would assess a financial penalty on one party to an interconnection for failing to transmit programming even while failing to do so may be the responsibility or choice of the programmer – not the cable, certified video or satellite provider.

AT&T very much wants to make CT-N available to its subscribers and has made repeated attempts to do so, all to no avail because of the decisions of the contractor operating CT-N. We stand by two previous options to allow for carriage of CT-N to our U-verse video subscribers. Attached to this testimony is a copy of a letter delivered to the chairs of the Energy and Technology Committee last April outlining both possible options. We reiterated to CT-N's operators in August that we stood by those two options and, in the case of “Option One,” we would be able to provide CT-N programming to our subscribers within a matter of weeks. We would still like to do so.

**Conclusion:**

AT&T strongly opposes Raised House Bill No. 6634 as prohibited by federal law. In addition, in these days of vibrant voice services competition, Section One of the bill is both unnecessary and contrary to the interests of consumers. Section Two of the bill would wrongly place a financial penalty on one party to an interconnection even when its actions were not to blame for the lack of an interconnection agreement and transmission of programming.



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**Ramona Carlow**  
President  
Connecticut

April 17, 2008

The Honorable John Fonfara and the Honorable Steve Fontana  
Connecticut General Assembly  
Legislative Office Building  
Hartford, CT 06106

Re: Carriage of the Connecticut Network

Dear Senator Fonfara and Representative Fontana:

Please accept the following as written confirmation of AT&T's voluntary commitment with regard to the carriage of the Connecticut Network (CT-N) on the U-verse platform.

AT&T remains committed to carrying CT-N as part of its video offering. From the outset of AT&T's efforts to enter the video marketplace in Connecticut, we have made clear that we intended to carry CT-N and have been working in good faith to get CT-N on the U-verse platform. Indeed, as you are aware, as recently as December 10, 2007, AT&T reached what it thought was an agreement with CT-N on how, and under what circumstances, CT-N would be carried on AT&T's U-Verse video network.

The benefits to CT-N under that agreement were considerable. AT&T agreed to pay all costs to get CT-N on our system, unlike the cable industry, which requires such costs to be paid by the taxpayers of Connecticut. AT&T agreed to provide CT-N a channel position of CT-N's choosing, unlike the cable industry which locates CT-N in any number of locations on their systems without regard to programming in adjacent channel positions. AT&T agreed to provide CT-N with an entirely new avenue to provide content to television watchers by carrying programming from CT-N 2 - content normally viewable only over the Internet.

The December agreement rested upon the fact that CT-N is not a commercial broadcast channel and therefore has no enforceable right to treatment equal to that given commercial channels. Instead, as CT-N was well aware, AT&T planned to carry CT-N using the platform and application that we are using to carry community access programming. In fact, AT&T will carry all non-broadcast programming on

that platform and using that application. The use of the common platform for community access programming and non-broadcast programming allows us to do more for programmers like CT-N than they are used to today while accommodating their limited budgets. Our ability to place CT-N2 on television screens across the state, at no additional cost to Connecticut taxpayers, is just one such example..

Dozens of AT&T staff and outside vendors worked countless days on all of the technical aspects related to getting CT-N carried on our system. AT&T spent thousands of dollars to order equipment and to install high-capacity lines. And we were prepared to spend thousands of dollars more, including developing and implementing a campaign to market the availability of CT-N to our existing and potential customers. In short, CT-N would have been on the U-verse platform as of February 22<sup>nd</sup> had the terms of the December agreement been implemented.

At the start of the current Session, CT-N notified us that it no longer wanted to be carried on AT&T's U-verse system pursuant to the terms of the agreement reached in December and instead has sought an amendment to Public Act 07-253 to mandate the carriage of CT-N in the same manner as a commercial broadcast station.

While AT&T has not changed its view that CT-N is not a commercial broadcast station, in an effort to ensure that CT-N is available to our video subscribers, AT&T proposes the following two options for proposed carriage of CT-N. Under either option, AT&T agrees to certain additional requirements for the carriage of CT-N without a legislative requirement to do so. While Public Act 07-253 currently requires that AT&T provide carriage for CT-N, in presenting these options, AT&T does not concede, nor should it be inferred, that the Legislature has the authority to dictate the technology or the manner in which we provide that carriage. These offers are voluntary commitments by AT&T to make CT-N available on its U-verse platform – unless and until the Legislature accepts one of the options, AT&T reserves its right to withdraw or modify the proposals. Furthermore, the terms of each proposal constitute an entire package; each is conditioned upon all the terms being accepted.

#### **OPTION 1 –**

AT&T reiterates the basis of the commitment made to CT-N in December, along with the following additional benefits. Specifically:

- AT&T will carry CT-N via the same application that we are using to carry community access programming at a dedicated channel position (Channel 240) unique to CT-N;
- Channel 240 is adjacent to CSPAN;
- Channel 240 would be the same channel position for CT-N throughout Connecticut for all U-verse CT customers;

- AT&T will begin carrying the channel within 60 days;
- Carriage will include multiple streams from CT-N to enable open captions and to enable U-verse customers to see additional content from CT-N which today is only available on the Internet (e.g., CT-N2 or their program schedule);
- AT&T will develop and implement a campaign to promote CT-N (Channel 240) for the U-Verse service within Connecticut;
- AT&T will pay all one-time and on-going costs for CT-N to be carried via this method;
- AT&T will offer most favored nation treatment ("MFN") to Connecticut re: the technical aspects of CT-N carriage vis-a-vis transmission of any other state's governmental channel. In other words, AT&T would agree that if it should retransmit any other state's governmental channel as a linear channel, AT&T will do so for CT-N as well, provided that CT-N satisfies whatever terms/conditions such other governmental channel has agreed to in exchange for linear carriage (including, but not limited to, payment for equipment and financial and operational responsibility for achieving technical standards for content).

This proposal again incorporates many of the considerable terms that were discussed and agreed to in December but also commits AT&T to supplying an additional stream for CT-N's daily program schedule – this schedule is only available to CT-N viewers today when accessing the CT-N's website or by subscribing to CT-N's e-mail service. The proposal also commits AT&T to developing and implementing a campaign to promote CT-N to Connecticut U-verse subscribers.

While CT-N rejected this proposal, primarily over alleged concerns with the quality of the platform, the two principal complaints made by CT-N regarding our platform – resolution and load time – are being addressed. With regard to resolution, the current application utilizes encoding of the source video content at 1 Mbps with a resolution of 320X240. AT&T is planning to increase the video encoding rate to 1.25 Mbps and the resolution to 480x480. This resolution will match AT&T's standard commercial channels. This enhancement is being tested currently in San Antonio and will begin to be phased-in in other markets in the near term. With regard to the launch time, this Fall, AT&T is planning to migrate the service from an application running on a browser remotely to an application running on a browser on the set top box. It is anticipated that this will cut in half the initial application load time to approximately 10-15 seconds. In addition, in the first half of 2009 AT&T is planning additional enhancements to migrate the service from the browser functionality described above, to integrate the navigation with the core Electronic Program Guide. This is expected to make the application launch quickly (in less than 3 seconds) and provide a seamless customer experience. Thus, within days (in the case of the resolution issue) and within approximately a year (in the case of the

launch time), CT-N's alleged concerns will be remedied. We have prepared a video that models these enhancements and we would be delighted to share that with you and representatives of CT-N.

## **OPTION 2:**

AT&T continues to believe that Option 1 represents a generous offer on its part to provide carriage of CT-N. Should CT-N continue to find that Option unacceptable, AT&T has reviewed the technical feasibility of AT&T carrying CT-N as a commercial channel. AT&T may be able to carry CT-N as a commercial channel if the following terms and conditions are instituted:

- First, the law would have to be changed so that it is silent as to carriage of CTN. Section 5(c) of Public Act 07-253 which deals with the carriage of CT-N and currently requires that it be carried in an identical manner to PEG must be deleted from the law. Likewise, Section 16(b) the corresponding section dealing with the cable companies which opt-in would also need to be deleted.
- Second, AT&T agrees – not as a requirement in law – but voluntarily, through this side letter, to carry CT-N as a commercial channel and to do so within 18 months.
- Third, as part of such agreement, that CT-N shall be required to pay for all one-time and on-going costs to carry CT-N as a commercial channel. There shall be no costs covered by AT&T.
- Fourth, during the time the commercial channel is being provisioned, AT&T will carry CT-N over the platform and application being used for community access programming and similar non-broadcast programming all at CT-N's expense. CT-N will be provided one stream for regular programming and one stream for captioned programming but no other streams and no other benefits.
- Fifth, the proposal to carry CT-N as a commercial channel is conditioned on the continuation of the special nature of CT-N's operating model and programming. CT-N is *fully funded by the State of Connecticut*. CT-N is a *statewide governmental channel*. It has a proven track record of providing quality coverage of all branches of Connecticut's state government – public hearings, Senate and House meetings and oral arguments before the State Supreme Court as well as live briefings from the Office of Emergency Management. As such it carries government-related content attractive to and desired by subscribers located throughout the state (similar to CSPAN).
- Sixth, that this agreement applies only to CT-N. AT&T will not agree to any requirement in law or otherwise to carry community access programming or non-broadcast programming like a commercial channel. If a court of competent jurisdiction and/or the Legislature should ever order AT&T to

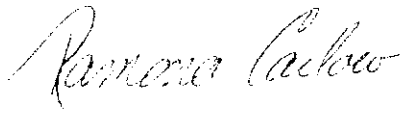
retransmit Connecticut community access programming on a commercial basis, and base such decision in whole or in part on the nature of the carriage enjoyed by CT-N, AT&T shall have the right to cease transmitting CT-N as a commercial channel and revert to the current method of content delivery.

AT&T remains committed to carrying CT-N on its U-verse platform. The above two proposals outline how AT&T may be able to accomplish that goal without the need for additional legislative mandates. The terms of either option, if accepted, also will be reflected in a separate commercial agreement between AT&T, CT-N and Connecticut Public Affairs Network, Inc., which manages and operates CT-N, and that agreement would have to be approved pursuant to processes appropriate for such an agreement.

It is my hope that you and your colleagues will consider accepting one of these two proposals and refrain from including in legislation any requirements that would mandate the manner in which CT-N is to be carried on AT&T's or any carrier's video system. Respectfully, any requirements in legislation to carry CT-N in any specific manner or by any specific technology or quality would overstep the limited authority granted franchising authorities by Title VI of the Cable Act.

I look forward to hearing from you.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ramona Calkins".